

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CHARLES BRAY,) Case No. 06cv2759-WQH (BLM)
)
v. Plaintiff,) **ORDER GRANTING MOTION TO**
LOWE'S COMPANIES, INC., et al.,) **CONTINUE DISCOVERY SCHEDULE**
Defendants.) **AND OTHER PRETRIAL PROCEEDINGS**

[DOC. NOS. 23 & 24])

On September 19, 2007, Third-Party Defendant The Quikrete Companies filed a motion to continue discovery and other dates in the above matter. Doc. Nos. 23 & 24. The request was based on Quikrete's late entry into the case, as well as the need to further assess Plaintiff's medical situation. This application for extension is endorsed by counsel for all parties. Id. Good cause appearing, Quikrete's motion is **GRANTED**. Accordingly, the dates and deadlines set forth in the previous Order Granting Joint Motion to Continue [Doc. No. 15] are continued as follows:

1. Each party shall serve on all opposing parties a list of experts whom that party expects to call at trial, on or before December 14, 2007. Each party may supplement its designation in response to the other party's designation no later than January 11, 2008. Expert

1 designations shall include the name, address, and telephone number of
2 each expert and a reasonable summary of the testimony the expert is
3 expected to provide. The list shall also include the normal rates the
4 expert charges for deposition and trial testimony.

5 The parties must identify any person who may be used at trial to
6 present evidence pursuant to Rules 702, 703 or 705 of the Federal Rules
7 of Evidence. This requirement is not limited to retained experts.

8 **Please be advised that failure to comply with this section or any**
9 **other discovery order of the Court may result in the sanctions provided**
10 **for in Fed. R. Civ. P. 37, including a prohibition on the introduction**
11 **of experts or other designated matters in evidence.**

12 2. All expert disclosures required by Fed. R. Civ. P. 26(a)(2)
13 shall be served on all parties on or before January 25, 2008. Any
14 contradictory or rebuttal information shall be disclosed on or before
15 February 8, 2008. In addition, Fed. R. Civ. P. 26(e)(1) imposes a duty
16 on the parties to supplement the expert disclosures made pursuant to
17 Fed. R. Civ. P. 26(a)(2)(B) by the time that pretrial disclosures are
18 due under Fed. R. Civ. P. 26(a)(3) (discussed below).

19 The parties are advised to consult with Fed. R. Civ. P. 26(a)(2)
20 regarding expert disclosures. Such disclosures shall include an expert
21 report, all supporting materials, a complete statement of all opinions
22 to be expressed and the basis and reasons therefor, the data or other
23 information considered by the expert in forming the opinions, any
24 exhibits to be used as a summary of or as support for the opinions, the
25 qualifications of the witness including a list of all publications
26 authored by the witness within the preceding ten years, the compensation
27 to be paid for the study and testimony, and a list of other cases in
28 which the witness has testified as an expert at trial or by deposition

1 within the preceding four years.

2 This disclosure requirement applies to all persons retained or
3 specially employed to provide expert testimony, or whose duties as an
4 employee of the party regularly involve the giving of expert testimony.

5 **Please be advised that failure to comply with this section or any**
6 **other discovery order of the Court may result in the sanctions provided**
7 **for in Fed. R. Civ. P. 37, including a prohibition on the introduction**
8 **of experts or other designated matters in evidence.**

9 3. All discovery shall be completed by all parties on or before
10 March 7, 2008. "Completed" means that all discovery under Rules 30-36
11 of the Federal Rules of Civil Procedure, and discovery subpoenas under
12 Rule 45, must be initiated a sufficient period of time in advance of the
13 cut-off date, so that it may be completed by the cut-off date, taking
14 into account the times for service, notice, and response as set forth in
15 the Federal Rules of Civil Procedure.

16 Counsel shall promptly and in good faith meet and confer with
17 regard to all discovery disputes in compliance with Civil Local Rules
18 16.5(k) and 26.1(a). All discovery motions shall be filed within thirty
19 (30) days after counsel have met and conferred and reached an impasse
20 with regard to any particular discovery issue, but in no event shall
21 discovery motions be filed more than sixty (60) days after the date upon
22 which the event giving rise to the discovery dispute occurred. For oral
23 discovery, the event giving rise to the discovery dispute is the
24 completion of the transcript of the affected portion of the deposition.
25 For written discovery, the event giving rise to the discovery dispute is
26 either the service of the response, or, if no response was served, the
27 initial date the response was due. In addition, all discovery motions
28 must be filed within thirty (30) days after the close of discovery.

1 4. All other pretrial motions must be filed on or before May 2,
2 2008. Motions will not be heard or calendared unless counsel for the
3 moving party has obtained a motion hearing date from the law clerk of
4 the judge who will hear the motion. Failure to timely request a motion
5 date may result in the motion not being heard. Motions will not be
6 heard unless you have obtained a date from the judge's law clerk.

7 Questions regarding this case should be directed to the judge's law
8 clerk. The Court draws the parties' attention to Local Rule 7.1(e)(4)
9 which requires that the parties allot additional time for service of
10 motion papers by mail. Papers not complying with this rule shall not be
11 accepted for filing.

12 Briefs or memoranda in support of or in opposition to any pending
13 motion shall not exceed twenty-five (25) pages in length without leave
14 of the judge who will hear the motion. No reply memorandum shall exceed
15 ten (10) pages without leave of the judge who will hear the motion.

16 5. A Mandatory Settlement Conference shall be conducted on
17 January 24, 2008 at 1:30 p.m. in the chambers of Magistrate Judge
18 Barbara L. Major located at 940 Front Street, Suite 5140, San Diego, CA
19 92101. All discussions at the Mandatory Settlement Conference will be
20 informal, off the record, privileged, and confidential. Counsel for any
21 non-English speaking party is responsible for arranging for the
22 appearance of an interpreter at the conference.

23 a. Personal Appearance of Parties Required: All parties,
24 adjusters for insured defendants, and other representatives of a party
25 having full and complete authority to enter into a binding settlement,
26 as well as the principal attorneys responsible for the litigation, must
27 be present in person and legally and factually prepared to discuss
28 settlement of the case. Counsel appearing without their clients

1 (whether or not counsel has been given settlement authority) will be
 2 cause for immediate imposition of sanctions and may also result in the
 3 immediate termination of the conference.

4 Unless there are extraordinary circumstances, persons required to
 5 attend the conference pursuant to this Order shall not be excused from
 6 personal attendance. **Requests for excuse from attendance for**
7 extraordinary circumstances shall be made in writing at least seventy-
8 two (72) hours prior to the conference. Failure to appear in person at
 9 the Mandatory Settlement Conference will be grounds for sanctions.

10 b. **Full Settlement Authority Required:** In addition to
 11 counsel who will try the case, a party or party representative with full
 12 settlement authority¹ must be present for the conference. In the case
 13 of a corporate entity, an authorized representative of the corporation
 14 who is not retained outside counsel must be present and must have
 15 discretionary authority to commit the company to pay an amount up to the
 16 amount of the Plaintiff's prayer (excluding punitive damages prayers).
 17 The purpose of this requirement is to have representatives present who
 18 can settle the case during the course of the conference without
 19 consulting a superior. Counsel for a government entity may be excused
 20 from this requirement so long as the government attorney who attends the

22 ¹ "Full settlement authority" means that the individuals at the settlement
 23 conference must be authorized to explore settlement options fully and to agree at that
 24 time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph
Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered
 25 discretion and authority" to change the settlement position of a party. Pitman v.
Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring
 26 a person with unlimited settlement authority to attend the conference contemplates that
 27 the person's view of the case may be altered during the face to face conference. Id.
 28 at 486. A limited or a sum certain of authority is not adequate. See Nick v. Morgan's
Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 Mandatory Settlement Conference (1) has primary responsibility for
2 handling the case, and (2) may negotiate settlement offers which the
3 attorney is willing to recommend to the government official having
4 ultimate settlement authority.

5 c. Confidential Settlement Statements Required: No later
6 than January 17, 2008, the parties shall submit directly to Magistrate
7 Judge Major's chambers confidential settlement statements no more than
8 five (5) pages in length. These confidential statements shall not be
9 filed or served on opposing counsel. Each party's confidential
10 statement must include the following:

11 (i) A brief description of the case, the claims and/or
12 counterclaims asserted, and the applicable defenses or position
13 regarding the asserted claims;

14 (ii) A specific and current demand or offer for
15 settlement addressing all relief or remedies sought. If a specific
16 demand or offer for settlement cannot be made at the time the brief is
17 submitted, then the reasons therefore must be stated along with a
18 statement as to when the party will be in a position to state a demand
19 or make an offer; and

20 (iii) A brief description of any previous settlement
21 negotiations, mediation sessions, or mediation efforts.

22 General statements that a party will "negotiate in good faith" is
23 not a specific demand or offer contemplated by this Order. It is
24 assumed that all parties will negotiate in good faith.

25 d. Requests to Continue a Mandatory Settlement Conference:
26 Any request to continue the Mandatory Settlement Conference or request
27 for relief from any of the provisions or requirements of this Order must
28 be sought by a written ex parte application. The application must (1)

1 be supported by a declaration of counsel setting forth the reasons and
2 justifications for the relief requested, (2) confirm compliance with
3 Civil Local Rule 26.1, and (3) report the position of opposing counsel
4 or any unrepresented parties subject to the Order.

5 If the case is settled in its entirety before the scheduled date of
6 the conference, counsel and any unrepresented parties must still appear
7 in person, unless a written joint motion confirming the complete
8 settlement of the case is submitted no less than twenty-four (24) hours
9 before the scheduled conference.

10 7. The parties must comply with the pretrial disclosure
11 requirements of Fed. R. Civ. P. 26(a)(3) no later than August 25, 2008.
12 The parties should consult Fed. R. Civ. P. 26(a)(3) for the substance of
13 the required disclosures.

14 Please be advised that failure to comply with this section or any
15 other discovery order of the Court may result in the sanctions provided
16 for in Fed. R. Civ. P. 37, including a prohibition on the introduction
17 of designated matters in evidence.

18 8. No Memoranda of Contentions of Fact and Law are to be filed
19 unless so ordered by the Court.

20 9. Counsel shall confer and take the action required by Local
21 Rule 16.1(f)(4) on or before September 1, 2008. At this meeting,
22 counsel shall discuss and attempt to enter into stipulations and
23 agreements resulting in simplification of the triable issues. Counsel
24 shall exchange copies and/or display all exhibits other than those to be
25 used for impeachment, lists of witnesses and their addresses including
26 experts who will be called to testify, and written contentions of
27 applicable facts and law. The exhibits shall be prepared in accordance
28 with Local Rule 16.1(f)(2)(c). Counsel shall cooperate in the

1 preparation of the proposed final pretrial conference order.

2 10. The proposed final pretrial conference order, including
3 written objections, if any, to any party's Fed. R. Civ. P. 26(a)(3)
4 pretrial disclosures, shall be prepared, served, and submitted to the
5 Clerk's Office on or before September 8, 2008 and shall be in the form
6 prescribed in and in compliance with Local Rule 16.1(f)(6). Any
7 objections shall comply with the requirements of Fed. R. Civ. P.
8 26(a)(3). **Please be advised that the failure to file written objections**
9 **to a party's pretrial disclosures may result in the waiver of such**
10 **objections, with the exception of those made pursuant to Rules 402**
11 **(relevance) and 403 (prejudice, confusion or waste of time) of the**
12 **Federal Rules of Evidence.**

13 11. The final pretrial conference is scheduled on the calendar of
14 the Honorable William Q. Hayes on September 15, 2008 at 11:00 a.m. The
15 trial date will be assigned by Judge Hayes at the pretrial conference.

16 12. The dates and times set forth herein will not be modified
17 except for good cause shown.

19 DATED: September 20, 2007

20 

21 BARBARA L. MAJOR
22 United States Magistrate Judge

23 COPY TO :

24 HONORABLE WILLIAM Q. HAYES
25 U.S. DISTRICT JUDGE

26 ALL COUNSEL